

AMENDED IN SENATE JUNE 1, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE MAY 5, 2015

AMENDED IN SENATE APRIL 20, 2015

AMENDED IN SENATE APRIL 6, 2015

SENATE BILL

No. 119

Introduced by Senator Hill

January 14, 2015

An act to add Section 7110.7 to the Business and Professions Code, to amend Sections 4216, 4216.1, 4216.2, 4216.3, 4216.4, 4216.5, 4216.6, 4216.7, 4216.8, and 4216.9 of, and to add Sections 4216.10, 4216.11, 4216.12, 4216.13, 4216.14, 4216.15, 4216.16, 4216.17, 4216.18, 4216.19, 4216.20, 4216.21, and 4216.22 to, the Government Code, and to amend Section 1702.5 of, and to add Sections 320.5 and 971 to, the Public Utilities Code, relating to excavations.

LEGISLATIVE COUNSEL'S DIGEST

SB 119, as amended, Hill. Protection of subsurface installations.

Existing law vests the Contractors' State License Board with all functions and duties relating to the administration of the Contractors' State License Law. Existing law authorizes the issuance of licenses to applicants for contractors' licenses by written examination under rules and regulations adopted by the board.

This bill would require the board to adopt a program to enforce violations of provisions relating to excavation. The bill would authorize the board to require a contractor to undergo training, levy a fine, and suspend a contractor's license for a violation.

Existing law requires every operator of a subsurface installation, except the Department of Transportation, to become a member of, participate in, and share in the costs of, a regional notification center. Existing law requires any person who plans to conduct any excavation to contact the appropriate regional notification center before commencing that excavation, as specified. Existing law defines a subsurface installation as any underground pipeline, conduit, duct, wire, or other structure. Existing law requires an operator of a subsurface installation, who receives notification of proposed excavation work, within 2 working days of that notification, excluding weekends and holidays, to mark the approximate location and number of subsurface installations that may be affected by the excavation or to advise that no subsurface installations operated by him or her would be affected. Existing law requires an operator of a subsurface installation that has failed to comply with these provisions to be liable to the excavator for damages, costs, and expenses.

This bill would declare the need to clarify and revise these provisions. The bill would define and redefine various terms relating to a regional notification center. The bill would expand the definition of a subsurface installation, to include an underground structure or submerged duct, pipeline, or structure, except as specified. ~~This bill would also delete the exception for the Department of Transportation.~~

The bill would require an excavator planning to conduct an excavation to delineate the area to be excavated before notifying the appropriate regional notification center of the planned excavation, as provided. The bill would require an operator, before the legal start date and time of the excavation, to locate and field mark, within the area delineated for excavation, its subsurface installations. The bill would require an operator to maintain and preserve all plans and records for any subsurface installation owned by that operator as that information becomes known, as specified.

This bill would prohibit an excavator that damages a subsurface installation due to an inaccurate field mark, as defined, by an operator from being liable for damages, replacement costs, or other expenses arising from damage to the subsurface installation, provided that the excavator complied with the provisions described above. The bill would also authorize, in any action for reimbursement or indemnification for a claim arising from damage to a subsurface installation in which a court finds that the excavator complied with those provisions, the

excavator to be awarded reasonable ~~attorneys'~~ *attorney's* fees and expenses.

The bill would delete the existing exemptions pertaining to an owner of real property and would instead exempt an owner of residential real property who only uses hand tools for excavation work not requiring a permit on his or her residential real property that has no easement or right-of-way for a subsurface installation.

The bill would require the operator of a high-priority subsurface installation to make specified notifications to a landowner if agricultural activities cannot safely be performed due to the depth of the subsurface installations and to mark the location and depth of those installations, as specified.

Existing law authorizes the Occupational Safety and Health Standards Board to adopt and to publish occupational safety and health standards.

This bill would require the board, on or before January 1, 2017, to revise these provisions to clarify best practices to be used by excavators when excavating near subsurface installations. The bill would also require the board to convene an advisory committee hearing to seek input from operators, regional notification centers, labor, and excavators on best practices to be used for excavating in urban areas, the appropriate frequency of potholing, and other best practices developed by various industry associations.

The bill would also authorize the Public Utilities Commission and the Office of the State Fire Marshal to enforce the requirement to locate and field mark subsurface installations and lines against operators of natural gas and electric underground infrastructure and hazardous liquid pipelines, unless these operators are municipal utilities.

This bill would create the California Underground Facilities Safe Excavation Authority. The bill would require the authority to enforce laws relating to the protection of underground infrastructure by hearing complaints and assessing civil penalties for violations of these provisions.

The authority would be composed of 9 members who would serve 2-year terms. The bill would authorize the authority to use compliance audits and investigations in enforcing these provisions and furthering its purposes. The bill would require the authority, on or before January 1, 2017, and each year thereafter, to report to the Governor and the Legislature on its activities and any recommendations.

The bill would create the Safe Energy Infrastructure and Excavation Fund in the State Treasury and would provide that moneys deposited

into the fund are to be used to cover the administrative expenses of the authority, upon appropriation by the Legislature. The bill would authorize the commission to use excess moneys in the fund for specified purposes relating to the safety of underground utilities, upon appropriation by the Legislature.

The Natural Gas Pipeline Safety Act of 2011, within the Public Utilities Act, designates the Public Utilities Commission as the state authority responsible for regulating and enforcing intrastate gas pipeline transportation and pipeline facilities pursuant to federal law, including the development, submission, and administration of a state pipeline safety program certification for natural gas. Existing federal law requires each operator of a buried gas pipeline to carry out a program to prevent damage to that pipeline from excavation activities, as specified.

The bill would require each gas corporation, as part of its damage prevention program to collect specified information to inform its outreach activities and to report this information to the Public Utilities Commission, as specified.

Under existing law, a violation of the Public Utilities Act or any order, decision, rule, direction, demand, or requirement of the commission is a crime.

Because the requirements described above are within the act, a violation of these requirements would impose a state-mandated local program by creating a new crime.

Existing law requires the Public Utilities Commission to develop and implement a safety enforcement program that is applicable to gas corporations and electrical corporations and that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director of the commission, for correction and punishment of safety violations. That law requires the commission to develop and implement an appeals process to govern issuance and appeal of citations, or resolution of corrective action orders. That law requires the commission to implement the safety enforcement program for gas safety by July 1, 2014, and for electrical safety by January 1, 2015.

This bill would require that moneys collected as a result of the issuance of citations to gas corporations and electrical corporations pursuant to the above-described law be deposited in the Safe Energy Infrastructure and Excavation Fund.

The bill would make other conforming changes.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares the following:

2 (a) Discussions that have taken place since Article 2
3 (commencing with Section 4216) of Chapter 3.1 of Division 5 of
4 Title 1 of the Government Code was added by Chapter 928 of the
5 Statutes of 1989 have led to widespread agreement that many of
6 the provisions of the article should be clarified.

7 (b) Regional notification centers, or “one-call” centers, have
8 developed means of electronic communication that improve the
9 efficiency of the “one-call” process, and statutory barriers to using
10 new methods of notification should be eliminated.

11 (c) Electronic positive response is a means to communicate the
12 status of responses to an excavator’s notice of excavation via the
13 one-call center and provides the safety benefit that an excavator
14 has an easy means to know whether or not all of the utilities within
15 the excavation area have marked their underground facilities.

16 (d) The delineation by an excavator of the area to be excavated
17 in advance of the field location and marking by subsurface facility
18 operators of their facilities aids the excavator in understanding
19 where underground facilities were marked, and thus improves
20 safety. This practice was recommended by the National
21 Transportation Safety Board in its 1997 study “Protecting Public
22 Safety through Excavation Damage Prevention” and is a best
23 practice of the Common Ground Alliance.

24 (e) Continuing an excavation after an excavation “ticket” has
25 expired does not promote safety, and excavators should renew
26 their ticket with the one-call center before expiration. Continuing
27 excavation when markings are no longer visible does not promote
28 safety, and excavators should stop work until the subsurface
29 installations are remarked.

1 (f) The benefits of eliminating old field marks once an
2 excavation project is complete are more than just aesthetic;
3 eliminating old field marks helps prevent confusion for the next
4 excavator to dig in that area.

5 (g) Increased communication between subsurface installation
6 operators and excavators before breaking ground has safety
7 benefits.

8 (h) Construction sites often have many parties conducting
9 different, ongoing work, and so the inherent safety risks associated
10 with that work can be increased by a failure of these parties to
11 effectively communicate. Excavators, operators of subsurface
12 facilities, and locators have a responsibility to communicate with
13 other parties before entering these worksites, which may require
14 advance schedule coordination, and also have a responsibility to
15 observe the safety requirements set for those worksites.

16 (i) Abandoned subsurface installations can be mistaken for
17 active subsurface installations that are marked, and thus present a
18 safety risk to excavators and the public. Safety will be improved
19 if subsurface facility operators identify these subsurface
20 installations when their existence is known.

21 (j) The ability of an operator of subsurface facilities to locate
22 and mark affected facilities can be seriously impaired by a lack of
23 high-quality records of those facilities, and thus operators should
24 keep records of their facilities for as long as they are in the ground,
25 whether or not they are in use.

26 (k) Failure by an operator of subsurface facilities to mark the
27 facilities within the required two-working-day period is a serious
28 breach of duty.

29 (l) While a utility operator has two working days after an
30 excavator's call to the one-call center to mark its underground
31 facilities, failure of that utility to do so does not relieve the
32 excavator of the safety responsibility to wait until the utility
33 operator has marked before commencing excavation.

34 (m) Mismarks by an operator place excavators and the public
35 at great safety risk, and so operators who mismark their facilities
36 are entitled to no award for any damages to those facilities.

37 (n) Facilities that are embedded in pavement require more
38 extensive communication to prevent them from being damaged.

39 (o) Exemptions that allow a class of persons to excavate without
40 calling 811 shall be made not based on convenience, but rather

1 permitted only if alternative procedures allow the excavation to
2 take place without compromising safety.

3 ~~(p) The exemption that permits the Department of Transportation~~
4 ~~not to submit its maps to the regional notification center and not~~
5 ~~to mark its underground facilities within 48 hours does not have~~
6 ~~a basis in safety.~~

7 *(p) More communication is needed between the Department of*
8 *Transportation and the regional notification centers, including*
9 *the sharing of facility location information, so that excavators may*
10 *be alerted of possible Department of Transportation subsurface*
11 *installations in the area of planned excavation and of the need to*
12 *seek a Department of Transportation encroachment permit.*

13 (q) Agricultural activities of less than 16 inches are not
14 excavations, and high-priority subsurface natural gas and hazardous
15 liquid pipeline installations are identified in rural areas with
16 above-ground markers pursuant to Section 192.707 of Part 192
17 and Section 195.410 of Part 195 of Title 49 of the Code of Federal
18 Regulations, respectively, so the management of safety around
19 underground facilities in agricultural operations must be different.

20 (r) Prevention of boring through sewer laterals with natural gas
21 and other subsurface installation services may be achieved through
22 reasonable care in the use of trenchless excavating technologies.
23 Indication of the location of sewer laterals can aid in prevention
24 of these cross-bores.

25 (s) The exemption that permits private property owners to dig
26 on their property without calling a regional notification center to
27 have the area marked for underground facilities does not have a
28 basis in safety.

29 (t) The exemption that permits homeowners to conduct
30 excavation on their property with heavy machinery or when there
31 is a utility easement on his or her property does not have a basis
32 in safety.

33 (u) Behaviors that are suspected to be unsafe, but upon which
34 there is not widespread agreement as to the level of risk and,
35 therefore, are unregulated, must be monitored to better assess the
36 risk.

37 (v) The Study on the Impact of Excavation Damage on Pipeline
38 Safety, submitted by the United States Department of
39 Transportation to Congress on October 9, 2014, reported that other
40 states have found that exemption of landscape maintenance

1 activities of less than 12 inches deep, when performed with hand
2 tools, do not appear to have a significant impact on safety. The
3 report cautions, however, that while those activity-based
4 exemptions may be acceptable, they should be supported by
5 sufficient data.

6 (w) Clarification is needed for excavators to understand best
7 excavation practices, and this could be accomplished through
8 clarification of the regulations on excavation by the Occupational
9 Safety and Health Standards Board.

10 (x) Other states have experienced a dramatic improvement in
11 safety after implementing centralized administrative enforcement
12 of one-call laws.

13 (y) California should have a board, composed of excavation
14 stakeholders, subject to oversight by the Legislature and the
15 Department of Finance, to enforce the state's safe excavation laws
16 through field audits, incident investigations, and administrative
17 hearings, and to promote safe excavation practices. Due to the size
18 of the state, and in order to reduce costs, the board should meet in
19 northern and southern California.

20 (z) The board should not be funded through the General Fund,
21 but should be funded by the community that will most directly
22 benefit from the enforcement of the state's safe excavation laws,
23 including the participants in the state's regional notification centers,
24 and the board should also be funded by the fines it levies, instead
25 of having those fines go to the General Fund.

26 (aa) After a hearing before the board pursuant to the
27 Administrative Procedure Act, a person found to be in violation
28 of the state's safe excavation laws could meet a variety of sanctions
29 including a fine not exceeding a specified amount and the
30 requirement to undergo relevant education.

31 (ab) To preserve due process, the superior court should be
32 available to an aggrieved party as a forum in which to challenge
33 a board decision.

34 (ac) Most persons who would be subject to the board's oversight
35 are also subject to the oversight of other enforcement agencies,
36 and those agencies should also take steps to reduce the safety risks
37 posed by violations of the state's safe excavation laws.

38 SEC. 2. Section 7110.7 is added to the Business and Professions
39 Code, to read:

1 7110.7. (a) The Contractors' State License Board shall adopt
2 a program to enforce violations by contractors of subdivision (a)
3 of Section 4216.2 of the Government Code.

4 (b) The Contractors' State License Board shall require
5 contractors to undergo a training program relating to compliance
6 with subdivision (a) of Section 4216.2 of the Government Code,
7 as determined by the board, for an initial violation. The training
8 program shall be conducted by a regional notification center, as
9 defined in Section 4216 of the Government Code, or by a training
10 program approved by a regional notification center.

11 (c) If the contractor does not submit evidence of completion of
12 a training program within 30 days of being notified of the
13 requirement to do so, or fails to provide a reasonable explanation
14 for his or her delay in scheduling that training in writing, the
15 contractor shall be subject to further disciplinary action.

16 (d) A subsequent violation within one calendar year of the first
17 violation, failure to attend training, or failure to pay fines ultimately
18 may result in suspension of the contractor's license.

19 (e) The board shall determine a graduated scale of fines
20 consistent with Section 7099.2.

21 SEC. 3. Section 4216 of the Government Code is amended to
22 read:

23 4216. As used in this article the following definitions apply:

24 (a) "Abandoned subsurface installation" means a subsurface
25 installation that is no longer in service and is physically
26 disconnected from any active or inactive subsurface installation.

27 (b) "Active subsurface installation" means a subsurface
28 installation currently in use or currently carrying service.

29 (c) "Authority" means the California Underground Facilities
30 Safe Excavation Authority.

31 (d) "Delineate" means to mark in white the location or path of
32 the proposed excavation using the guidelines in Appendix B of
33 the "Guidelines for Excavation Delineation" published in Best
34 Practices Version 11.0 by the Common Ground Alliance. If there
35 is a conflict between the marking practices in those guidelines and
36 other provisions of this article, this article shall control.
37 "Delineation" also includes physical identification of the area to
38 be excavated using pink marking, *if* an excavator makes a
39 determination that standard delineation may be misleading to those
40 persons using affected streets and highways, or be misinterpreted

1 as a traffic or pedestrian control, and the excavator has contacted
2 the regional notification center to advise the operators that the
3 excavator will physically identify the area to be excavated using
4 pink markings.

5 (e) “Electronic positive response” means an electronic response
6 from an operator to the regional notification center providing the
7 status of an operator’s statutorily required response to a ticket.

8 (f) (1) “Emergency” means a sudden, unexpected occurrence,
9 involving a clear and imminent danger, demanding immediate
10 action to prevent or mitigate loss of, or damage to, life, health,
11 property, or essential public services.

12 (2) “Unexpected occurrence” includes, but is not limited to, a
13 fire, flood, earthquake or other soil or geologic movement, riot,
14 accident, damage to a subsurface installation requiring immediate
15 repair, or sabotage.

16 (g) (1) “Excavation” means penetration of the plane between
17 the air and the existing surface of the ground or pavement by any
18 operation in which earth, rock, pavement, or other material below
19 the existing grade is moved, removed, or otherwise displaced by
20 means of tools, equipment, or explosives in any of the following
21 ways: grading, trenching, digging, ditching, drilling, augering,
22 tunneling, scraping, cable or pipe plowing and driving, gouging,
23 crushing, jack hammering, saw cutting, or any other way.

24 (2) For purposes of this article, “excavation” does not include
25 any of the following:

26 (A) Plowing, cultivating, planting, harvesting, or similar
27 operations in connection with agricultural activities, unless the
28 activity disturbs the soil to a depth of 16 inches or more.

29 (B) Landscape maintenance activity that is performed with hand
30 tools at a depth of more than 12 inches. Landscape maintenance
31 activity includes all of the following:

32 (i) Aeration, dethatching, and cutting of vegetation, including
33 lawn edging.

34 (ii) Installation or replacement of ground cover and plant life.

35 (iii) Minor fixes to existing drainage and sprinkler systems.

36 (C) ~~This paragraph~~ *Subparagraph (B)* shall become inoperative
37 on January 1, 2020.

38 (3) The exclusion of the activities in paragraph (2) from the
39 definition of “excavation” shall not be used to discourage a person
40 planning to perform those activities from voluntarily notifying a

1 regional notification center pursuant to Section 4216.2, and does
2 not relieve an operator of a subsurface installation from the
3 obligation to locate and *field* mark pursuant to Section 4216.3
4 following the notification. ~~This paragraph shall become inoperative~~
5 ~~on January 1, 2020.~~

6 (h) Except as provided in Section 4216.8, “excavator” means
7 any person, firm, contractor or subcontractor, owner, operator,
8 utility, association, corporation, partnership, business trust, public
9 agency, or other entity that performs any excavation.

10 (i) “Hand tool” means a piece of equipment used for excavating
11 that uses human power and is not powered by any motor, engine,
12 hydraulic, or pneumatic device.

13 (j) “High priority subsurface installation” means high-pressure
14 natural gas pipelines with normal operating pressures greater than
15 415kPA gauge (60psig), petroleum pipelines, pressurized sewage
16 pipelines, high-voltage electric supply lines, conductors, or cables
17 that have a potential to ground of greater than or equal to 60kv, or
18 hazardous materials pipelines that are potentially hazardous to
19 workers or the public if damaged.

20 (k) “Inactive subsurface installation” means both of the
21 following:

22 (1) The portion of an underground subsurface installation that
23 is not in use but is still connected to the subsurface installation, or
24 to any other subsurface installation, that is in use or still carries
25 service.

26 (2) A new underground subsurface installation that has not been
27 connected to any portion of an existing subsurface installation.

28 (l) “Legal excavation start date and time” means at least two
29 working days, not including the date of notification, or up to 14
30 calendar days from the date of notification, if so specified by the
31 excavator.

32 (m) “Local agency” means a city, county, city and county,
33 school district, or special district.

34 (n) (1) “Locate and field mark” means to indicate the existence
35 of any owned or maintained subsurface installations by using the
36 guidelines in Appendix B of the “Guidelines for ~~Operator’s~~
37 *Operator* Facility Field Delineation” published in Best Practices
38 Version 11.0 by the Common Ground Alliance and in conformance
39 with the uniform color code of the American Public Works

1 Association. If there is a conflict between the marking practices
2 in the guidelines and this article, this article shall control.

3 (2) “Locate and field mark” does not require an indication of
4 the depth.

5 (o) “Near miss” means an event in which damage did not occur,
6 but a clear potential for damage was identified.

7 (p) “Operator” means any person, corporation, partnership,
8 business trust, public agency, or other entity that owns, operates,
9 or maintains a subsurface installation. For purposes of Section
10 4216.1, an “operator” does not include an owner of real property
11 where subsurface facilities are exclusively located if they are used
12 exclusively to furnish services on that property and the subsurface
13 facilities are under the operation and control of that owner.

14 (q) “Pavement” means a manmade surface material that cannot
15 be removed with a conventional hand tool.

16 (r) “Positive response” means the response from an operator
17 directly to the excavator providing the status of an operator’s
18 statutorily required response to a ticket.

19 (s) “Qualified person” means a person who completes a training
20 program in accordance with the requirements of Section 1509 of
21 Title 8 of the California Code of Regulations, Injury and Illness
22 Prevention Program, that meets the minimum locators training
23 guidelines and practices published in Best Practices Version 11.0
24 by the Common Ground Alliance.

25 (t) “Regional notification center” means a nonprofit association
26 or other organization of operators of subsurface installations that
27 provides advance warning of excavations or other work close to
28 existing subsurface installations, for the purpose of protecting
29 those installations from damage, removal, relocation, or repair.

30 (u) “State agency” means every state agency, department,
31 division, bureau, board, or commission.

32 (v) “Subsurface installation” means any underground or
33 submerged duct, pipeline, or structure, including, but not limited
34 to, a conduit, duct, line, pipe, wire, or other structure, except
35 nonpressurized sewerlines, nonpressurized storm drains, or other
36 nonpressurized drain lines.

37 (w) “Ticket” means an excavation location request issued a
38 number by the regional notification center.

39 (x) “Tolerance zone” means 24 inches on either side of the field
40 marking placed by the operator as follows:

1 (1) A single marking, assumed to be the centerline of the
2 subsurface installation, 24 inches from either side of that marking.

3 (2) A single marking with the size of installation specified as
4 24 inches plus one-half the specified size on either side from the
5 single marking.

6 (3) Multiple markings that graphically show the width of the
7 installation 24 inches from the marking that graphically show the
8 outside surface of the subsurface installation on a horizontal plane.

9 (y) “Working day” for the purposes of determining excavation
10 start date and time means a weekday Monday through Friday, from
11 7:00 a.m. to 5:00 p.m., except for federal holidays and state
12 holidays, as defined in Section 19853 of the Government Code.

13 SEC. 4. Section 4216.1 of the Government Code is amended
14 to read:

15 4216.1. Every operator of a subsurface ~~installation~~ *installation*,
16 *except the Department of Transportation*, shall become a member
17 of, participate in, and share in the costs of, a regional notification
18 center. Operators of subsurface installations who are members of,
19 participate in, and share in, the costs of a regional notification
20 center, including, but not limited to, the Underground Service
21 Alert—Northern California or the Underground Service
22 Alert—Southern California are in compliance with this section
23 and Section 4216.9.

24 SEC. 5. Section 4216.2 of the Government Code is amended
25 to read:

26 4216.2. (a) Before notifying the appropriate regional
27 notification center, an excavator planning to conduct an excavation
28 shall delineate the area to be excavated. If the area is not delineated,
29 an operator may, at the operator’s discretion, choose not to locate
30 and field mark until the area to be excavated has been delineated.

31 (b) Except in an emergency, an excavator planning to conduct
32 an excavation shall notify the appropriate regional notification
33 center of the excavator’s intent to excavate at least two working
34 days, and not more than 14 calendar days, before beginning that
35 excavation. The date of the notification shall not count as part of
36 the two-working-day notice. If an excavator gives less notice than
37 the legal excavation start date and time and the excavation is not
38 an emergency, the regional notification center will take the
39 information and provide a ticket, but an operator has until the legal
40 excavation start date and time to respond.

(c) When the excavation is proposed within 10 feet of a high priority subsurface installation, the operator of the high priority subsurface installation shall notify the excavator of the existence of the high priority subsurface installation prior to the legal excavation start date and time, and set up an onsite meeting at a mutually agreed upon time to determine actions or activities required to verify the location and prevent damage to the high priority subsurface installation. The excavator shall not begin excavating until after the completion of the onsite meeting.

(d) Except in an emergency, every excavator covered by Section 4216.8 planning to conduct an excavation on private property that does not require an excavation permit may contact the appropriate regional notification center if the private property is known, or reasonably should be known, to contain a subsurface installation other than the underground facility owned or operated by the excavator. Before notifying the appropriate regional notification center, an excavator shall delineate the area to be excavated. Any temporary marking placed at the planned excavation location shall be clearly seen, functional, and considerate to surface aesthetics and the local community. An excavator shall check if any local ordinances apply to the placement of temporary markings.

(e) If an excavator gives less than the legal excavation start date and time and it is not an emergency, the regional notification center shall take the information and provide a ticket but an operator shall have until the legal excavation start date and time to respond.

(f) The regional notification center shall provide a ticket to the person who contacts the center pursuant to this section and shall notify any member, if known, who has a subsurface installation in the area of the proposed excavation. A ticket shall be valid for 28 days from the date of issuance. If work continues beyond 28 days, the excavator shall update the ticket either by accessing the center's Internet Web site or by calling "811" by the end of the 28th day.

(g) A record of all notifications by an excavator or operator to the regional notification center shall be maintained for a period of not less than three years. The record shall be available for inspection by the excavator and any member, or their representative, during normal working hours and according to guidelines for inspection as may be established by the regional notification centers.

1 (h) Unless an emergency exists, an excavator shall not begin
2 excavation until the excavator receives a positive response from
3 all known subsurface installations within the delineated boundaries
4 of the proposed area of excavation.

5 (i) If a site requires special access, an excavator shall request
6 an operator to contact the excavator regarding that special access
7 or give special instructions on the location request.

8 (j) If a ticket obtained by an excavator expires but work is
9 ongoing, the excavator shall call into the regional notification
10 center and get a new ticket and wait a minimum of two working
11 days, not including the date of call in, before restarting excavation.
12 All excavation shall cease during the waiting period.

13 (k) When the excavation is complete, the excavator shall
14 eliminate or camouflage any temporary markings that remain for
15 45 days or more, unless a local ordinance indicates otherwise.

16 SEC. 6. Section 4216.3 of the Government Code is amended
17 to read:

18 4216.3. (a) (1) (A) Unless the excavator and operator
19 mutually agree to a later start date and time, or otherwise agree to
20 the sequence and timeframe in which the operator will locate and
21 field mark, an operator shall do one of the following before the
22 legal excavation start date and time:

23 (i) Locate and field mark within the area delineated for
24 excavation and, where multiple subsurface installations of the same
25 type are known to exist together, mark the number of subsurface
26 installations.

27 (ii) To the extent and degree of accuracy that the information
28 is available, provide information to an excavator where the
29 operator's active or inactive subsurface installations are located.

30 (iii) Advise the excavator it operates no subsurface installations
31 in the area delineated for excavation.

32 (B) An operator shall mark newly installed subsurface
33 installations in areas with continuing excavation activity.

34 (C) An operator shall indicate with an "A" inside a circle the
35 presence of any abandoned subsurface installations within the
36 delineated area. The markings are to make an excavator aware that
37 there are abandoned subsurface installations within that delineated
38 work area.

39 (2) Only a qualified person shall perform subsurface installation
40 locating activities.

1 (3) A qualified person performing subsurface installation
2 locating activities on behalf of an operator shall use a minimum
3 of a single-frequency utility locating device and shall have access
4 to alternative sources for verification, if necessary.

5 (4) An operator shall amend, update, maintain, and preserve all
6 plans and records for its subsurface installations as that information
7 becomes known. If there is a change in ownership of a subsurface
8 installation, the records shall be turned over to the new operator.
9 Records on abandoned subsurface installations shall be kept
10 beginning on January 1, 2016.

11 (b) If the field marks are no longer reasonably visible, an
12 excavator shall renotify the regional notification center with a
13 request for remarks that can be for all or a portion of the
14 excavation. Excavation shall cease in the area to be remarked. If
15 the area to be remarked is not the full extent of the original
16 excavation, the excavator shall delineate the portion to be remarked.
17 If the delineation markings are no longer reasonably visible, the
18 excavator shall redelineate the area to be remarked. If remarks are
19 requested, the operator shall have two working days, not including
20 the date of request, to remark the subsurface installation.
21 Excavation shall cease in the area where the remarks are requested.
22 If the area to be remarked is not the full extent of the original
23 excavation, the excavator shall delineate the portion to be remarked
24 and provide a description of the area requested to be remarked on
25 the ticket. The excavator shall provide a description for the area
26 to be remarked that falls within the area of the original location
27 request.

28 (c) Every operator may supply an electronic positive response
29 through the regional notification center before the legal excavation
30 start date and time. The regional notification center shall make
31 those responses available.

32 (d) The excavator shall notify the appropriate regional
33 notification center of the failure of an operator to identify
34 subsurface installations pursuant to subparagraph (A) or (B) of
35 paragraph (1) of subdivision (a), or subdivision (b). The notification
36 shall include the ticket issued by the regional notification center.
37 A record of all notifications received pursuant to this subdivision
38 shall be maintained by the regional notification center for a period
39 of not less than three years. The record shall be available for
40 inspection pursuant to subdivision (h) of Section 4216.2.

1 (e) If an operator or local agency knows that it has a subsurface
2 installation embedded or partially embedded in the pavement that
3 is not visible from the surface, the operator or local agency shall
4 contact the excavator before pavement removal to communicate
5 and determine a plan of action to protect that subsurface installation
6 and excavator.

7 SEC. 7. Section 4216.4 of the Government Code is amended
8 to read:

9 4216.4. (a) (1) Except as provided in paragraph (2), if an
10 excavation is within the approximate location of a subsurface
11 installation, the excavator shall expose with hand tools to the depth
12 of the excavation within the tolerance zone, including any
13 applicable clearance requirements, for the full length of the project.

14 (2) (A) An excavator may use a vacuum excavation device to
15 expose subsurface installations within the tolerance zone if the
16 operator has marked the subsurface installation, the excavator has
17 contacted any operator whose subsurface installations may be in
18 conflict with the excavation, and the operator has agreed to the
19 use of a vacuum excavation device. An excavator shall inform the
20 regional notification center of his or her intent to use a vacuum
21 excavation device when obtaining a ticket.

22 (B) An excavator may use power-operated or boring equipment
23 for the removal of any existing pavement only if there is no known
24 subsurface installation contained in the pavement.

25 (b) If the exact location of the subsurface installation cannot be
26 determined by hand excavating in accordance with subdivision
27 (a), the excavator shall request the operator to provide additional
28 information to the excavator, to the extent that information is
29 available to the operator, to enable the excavator to determine the
30 exact location of the installation. If the excavator has questions
31 about the markings that an operator has placed, the excavator may
32 contact the notification center to send a request to have the operator
33 contact the excavator directly. The regional notification center
34 shall provide the excavator with the contact telephone number of
35 the subsurface installation operator.

36 (c) An excavator discovering or causing damage to a subsurface
37 installation, including all breaks, leaks, nicks, dents, gouges,
38 grooves, or other damage to subsurface installation lines, conduits,
39 coatings, or cathodic protection, shall immediately notify the
40 subsurface installation operator. The excavator may contact the

1 regional notification center to obtain the contact information of
2 the subsurface installation operator. If high priority subsurface
3 installations are damaged and the operator cannot be contacted
4 immediately, the excavator shall call 911 emergency services.

5 (d) Each excavator, operator, or locator shall communicate with
6 each other and respect the appropriate safety requirements and
7 ongoing activities of the other parties, if known, at an excavation
8 site.

9 SEC. 8. Section 4216.5 of the Government Code is amended
10 to read:

11 4216.5. The requirements of this article apply to state agencies
12 and to local agencies that own or operate subsurface ~~installations~~.
13 *installations, except as otherwise provided in Section 4216.1.* A
14 local agency that is required to provide the services described in
15 Section 4216.3 may charge a fee in an amount sufficient to cover
16 the cost of providing that service.

17 SEC. 9. Section 4216.6 of the Government Code is amended
18 to read:

19 4216.6. (a) (1) Any operator or excavator who negligently
20 violates this article is subject to a civil penalty in an amount not
21 to exceed ten thousand dollars (\$10,000).

22 (2) Any operator or excavator who knowingly and willfully
23 violates any of the provisions of this article is subject to a civil
24 penalty in an amount not to exceed fifty thousand dollars (\$50,000).

25 (3) Except as otherwise specifically provided in this article, this
26 section is not intended to affect any civil remedies otherwise
27 provided by law for personal injury or for property damage,
28 including any damage to subsurface installations, nor is this section
29 intended to create any new civil remedies for those injuries or that
30 damage.

31 (4) This article shall not be construed to limit any other provision
32 of law granting governmental immunity to state or local agencies
33 or to impose any liability or duty of care not otherwise imposed
34 by law upon any state or local agency.

35 (b) An action may be brought by the Attorney General, the
36 district attorney, or the local or state agency that issued the permit
37 to excavate, for the enforcement of the civil penalty pursuant to
38 this section either in a civil action brought in the name of the people
39 of the State of California or in an administrative hearing before
40 the authority pursuant to Section 4216.20. If penalties are collected

1 as a result of a civil suit brought by a state or local agency for
2 collection of those civil penalties, the penalties imposed shall be
3 paid to the general fund of the agency. If more than one agency is
4 involved in enforcement, the penalties imposed shall be
5 apportioned among them by the court in a manner that will fairly
6 offset the relative costs incurred by the state or local agencies, or
7 both, in collecting these fees.

8 (c) The requirements of this article may also be enforced as
9 follows:

10 (1) The Contractors' State License Board shall enforce paragraph
11 (1) of subdivision (a) of Section 4216.2 as specified in Section
12 7110.7 of the Business and Professions Code.

13 (2) The Public Utilities Commission may enforce subdivisions
14 (a) and (b) of Section 4216.3 against operators of natural gas and
15 electric underground infrastructure, unless those operators are
16 municipal utilities.

17 (3) The Office of the State Fire Marshal may enforce
18 subdivisions (a) and (b) of Section 4216.3 against operators of
19 hazardous liquid pipelines, unless those operators are municipal
20 utilities.

21 (d) Statewide information provided by operators and excavators
22 regarding facility events shall be compiled and made available in
23 an annual report by regional notification centers and posted on the
24 Internet Web sites of the regional notification centers.

25 (e) For purposes of subdivision (d), the following terms have
26 the following meanings:

27 (1) "Facility event" means the occurrence of excavator
28 downtime, damages, near misses, and violations.

29 (2) "Statewide information" means information submitted by
30 operators and excavators using the California Regional Common
31 Ground Alliance's Virtual Private Damage Information Reporting
32 Tool. Supplied data shall comply with the Damage Information
33 Reporting Tool's minimum essential information as listed in Best
34 Practices Version 11.0 by the Common Ground Alliance.

35 SEC. 10. Section 4216.7 of the Government Code is amended
36 to read:

37 4216.7. (a) If a subsurface installation is damaged by an
38 excavator as a result of failing to comply with Section 4216.2 or
39 4216.4, *or subdivision (b) of Section 4216.3*, or as a result of failing
40 to comply with the operator's requests to protect the subsurface

1 installation as specified by the operator before the start of
2 excavation, the excavator shall be liable to the operator of the
3 subsurface installation for resulting damages, costs, and expenses
4 to the extent the damages, costs, and expenses were proximately
5 caused by the excavator's failure to comply.

6 (b) If an operator has failed to become a member of, participate
7 in, or share in the costs of, a regional notification center, that
8 operator shall forfeit his or her claim for damages to his or her
9 subsurface installation arising from an excavation against an
10 excavator who has complied with this article to the extent damages
11 were proximately caused by the operator's failure to comply with
12 this article.

13 (c) If an operator of a subsurface installation has failed to
14 comply with the provisions of Section 4216.3, including, but not
15 limited to, the requirement to field mark the appropriate location
16 of subsurface installations within two working days of notification,
17 has failed to comply with paragraph (2) of subdivision (a) of
18 Section 4216.2, or has failed to comply with subdivision (b) of
19 Section 4216.4, the operator shall be liable to the excavator who
20 has complied with Sections 4216.2 and 4216.4 for damages,
21 including liquidated damages, liability, losses, costs, and expenses
22 resulting from the operator's failure to comply with these specified
23 requirements to the extent the damages, costs, and expenses were
24 proximately caused by the operator's failure to comply.

25 (d) An excavator who damages a subsurface installation due to
26 an inaccurate field mark by an operator, or by a third party under
27 contract to perform field marking for the operator, shall not be
28 liable for damages, replacement costs, or other expenses arising
29 from damages to the subsurface installation if the excavator
30 complied with Sections 4216.2 and 4216.4.

31 This section is not intended to create any presumption or to affect
32 the burden of proof in any action for personal injuries or property
33 damage, other than damage to the subsurface installation, nor is
34 this section intended to affect, create, or eliminate any remedy for
35 personal injury or property damage, other than damage to the
36 subsurface installation.

37 (e) In any actions for reimbursement or indemnification for a
38 claim arising from damage to a subsurface installation in which a
39 court finds that the excavator complied with the requirements of

1 this article, the excavator may be awarded reasonable attorney's
2 fees and expenses.

3 (f) For the purposes of this section, "inaccurate field mark"
4 means a mark, or set of markings, made pursuant to Section 4216.3,
5 that did not correctly indicate the approximate location of a
6 subsurface installation affected by an excavation and includes the
7 actual physical location of a subsurface installation affected by an
8 excavation that should have been marked pursuant to Section
9 4216.3 but was not.

10 (g) Nothing in this section shall be construed to do any of the
11 following:

12 (1) Affect claims including, but not limited to, third-party claims
13 brought against the excavator or operator by other parties for
14 damages arising from the excavation.

15 (2) Exempt the excavator or operator from his or her duty to
16 mitigate any damages as required by common or other applicable
17 law.

18 (3) Exempt the excavator or operator from liability to each other
19 or third parties based on equitable indemnity or comparative or
20 contributory negligence.

21 SEC. 11. Section 4216.8 of the Government Code is amended
22 to read:

23 4216.8. This article does not apply to either of the following
24 persons:

25 (a) An owner of residential real property doing work not
26 requiring a permit issued by a state or local agency on his or her
27 residential real property that has no easement or right-of-way for
28 a subsurface installation who only uses hand tools for excavation.
29 A person described in this subdivision is not an "excavator" as
30 defined in subdivision (h) of Section 4216, however this
31 subdivision shall not discourage a person from voluntarily notifying
32 a regional notification center pursuant to Section 4216.2, and does
33 not relieve an operator of a subsurface facility from the obligation
34 to locate and field mark pursuant to Section 4216.3 following the
35 notification.

36 (b) Any person or private entity that leases or rents power
37 operated or power-driven excavating or boring equipment,
38 regardless of whether an equipment operator is provided for that
39 piece of equipment or not, to a contractor or subcontractor licensed
40 pursuant to Article 5 (commencing with Section 7065) of Chapter

9 of Division 3 of the Business and Professions Code, if the signed rental agreement between the person or private entity and the contractor or subcontractor contains the following provision:

“It is the sole responsibility of the lessee or renter to follow the requirements of the regional notification center law pursuant to Article 2 (commencing with Section 4216) of Chapter 3.1 of Division 5 of Title 1 of the Government Code. By signing this contract, the lessee or renter accepts all liabilities and responsibilities contained in the regional notification center law.”

SEC. 12. Section 4216.9 of the Government Code is amended to read:

4216.9. (a) A permit to excavate issued by any local agency, as defined in Section 4216, or any state agency, shall not be valid unless the applicant has been provided an initial ticket by a regional notification center pursuant to Section 4216.2. For purposes of this section, “state agency” means every state agency, department, division, bureau, board, or commission, including the Department of Transportation.

(b) This article does not exempt any person or corporation from Sections 7951, 7952, and 7953 of the Public Utilities Code.

SEC. 13. Section 4216.10 is added to the Government Code, to read:

4216.10. If the operator of a high-priority subsurface installation finds that the depth of the subsurface installation subject to agricultural activities described in subparagraph (A) of paragraph (2) of subdivision (g) of Section 4216 is insufficient to safely perform those activities, the operator of the high-priority subsurface installation shall send notification, by registered mail, to the landowner of the potential hazard and, within ____ days of that notification, shall access the site at a date agreed upon by the operator and the landowner to identify with permanent markers the location and depth of the high-priority subsurface installation.

SEC. 14. Section 4216.11 is added to the Government Code, to read:

4216.11. (a) On or before January 1, 2017, the Occupational Safety and Health Standards Board shall revise subdivision (b) of Section 1541 of Title 8 of the California Code of Regulations to

1 clarify best practices to be used by excavators when excavating
2 near subsurface installations.

3 (b) The board shall convene an advisory committee hearing to
4 seek input from operators, regional notification centers, labor, and
5 excavators on best practices to be used by excavators when
6 excavating in urban areas where there is a high density of
7 subsurface installations, the appropriate frequency of potholing,
8 and other best practices developed by various industry associations,
9 including the Common Ground Alliance.

10 SEC. 15. Section 4216.12 is added to the Government Code,
11 to read:

12 4216.12. (a) The California Underground Facilities Safe
13 Excavation Authority is hereby created.

14 (b) The authority shall enforce this article and further its
15 purposes, and thus has the same powers as are conferred upon
16 heads of departments of the state by Article 1 (commencing with
17 Section 11150) of Chapter 2 of Part 1 of Division 3 of Title 2 in
18 the Government Code. Notwithstanding Section 11152, the
19 authority shall not adopt rules or regulations.

20 (c) The authority may hold hearings and conduct any
21 investigations necessary to carry out its powers and duties
22 prescribed by this article and, for those purposes, has the same
23 powers as are conferred upon heads of departments of the state by
24 Article 2 (commencing with Section 11180) of Chapter 2 of Part
25 1 of Division 3 of Title 2.

26 SEC. 16. Section 4216.13 is added to the Government Code,
27 to read:

28 4216.13. (a) The authority shall be composed of nine members,
29 of which seven shall be appointed by the Governor, one shall be
30 appointed by the Speaker of the Assembly, and one shall be
31 appointed by the Senate Committee on Rules.

32 (b) The seven members appointed by the Governor shall be
33 appointed, as follows:

34 (1) Three members shall have knowledge and expertise in
35 managing underground. Of those three members, one shall have
36 knowledge and expertise in managing the underground institutions
37 of a municipal utility.

38 (2) Two members shall have knowledge and expertise in contract
39 excavation.

1 (3) One member shall have knowledge and expertise in
2 subsurface installation location and marking.

3 (4) One member shall have knowledge and expertise in operating
4 a regional notification center.

5 (c) The member appointed by the Speaker of the Assembly shall
6 have knowledge and expertise in representing in safety matters
7 the workers employed by contract excavators.

8 (d) The member appointed by the Senate Committee on Rules
9 shall have knowledge and expertise in managing the underground
10 installations on one's own property, and may be drawn from
11 agricultural, commercial, or residential, or other, property sectors.

12 SEC. 17. Section 4216.14 is added to the Government Code,
13 to read:

14 4216.14. (a) The term of a member of the authority is two
15 years. Of the first members of the authority, four members,
16 determined by lot, shall serve for one year so that the terms of the
17 members shall be staggered.

18 (b) A member shall not be appointed for more than two
19 consecutive full terms.

20 (c) To the extent possible, the Governor shall fill any vacancy
21 in the membership of the authority within 60 days after the vacancy
22 occurs.

23 (d) Upon the recommendation of the authority, the Governor
24 may remove a member appointed by the Governor for
25 incompetence or misconduct.

26 SEC. 18. Section 4216.15 is added to the Government Code,
27 to read:

28 4216.15. (a) The authority shall select a chairperson from
29 among its members at the first meeting of each calendar year or
30 when a vacancy in the chair exists.

31 (b) Subject to subdivision (c), the manner in which the
32 chairperson is selected and the chairperson's term of office shall
33 be determined by the authority.

34 (c) A member of the authority shall not serve more than two
35 consecutive years as the chairperson of the authority.

36 SEC. 19. Section 4216.16 is added to the Government Code,
37 to read:

38 4216.16. The authority shall meet at least once every three
39 months. The authority shall hold meetings in Sacramento and Los
40 Angeles, and in other locations in the state it deems necessary.

1 SEC. 20. Section 4216.17 is added to the Government Code,
2 to read:

3 4216.17. (a) In addition to other powers specified in this article,
4 the authority may do any of the following:

5 (1) Apply for and accepts grants, contributions, and
6 appropriations, and award grants consistent with the goals and
7 objectives of a program or activity the authority is authorized to
8 implement or administer.

9 (2) Contract for professional services if the work or services
10 cannot be satisfactorily performed by its employees or by any other
11 state agency.

12 (3) Sue and be sued.

13 (4) Request and utilize the advice and services of all federal,
14 state, local, and regional agencies.

15 (5) Conduct public education and outreach programs consistent
16 with this article, promote the development of safety procedures
17 for excavation and demolition projects constructed in the area of
18 underground facilities, or make grants to local governments or
19 private entities to do so.

20 (b) Notwithstanding Section 11152, the authority shall not adopt
21 rules or regulations.

22 SEC. 21. Section 4216.18 is added to the Government Code,
23 to read:

24 4216.18. The authority may obtain funding for its operational
25 expenses from:

26 (a) A federal or state grant.

27 (b) A fee charged to members of the regional notification centers
28 not to exceed the reasonable regulatory cost incident to enforcement
29 of this article.

30 (c) A fine assessed pursuant to Section 4216.20.

31 (d) A filing or administrative fee to hear a complaint pursuant
32 to Section 4216.20.

33 (e) Any other source.

34 SEC. 22. Section 4216.19 is added to the Government Code,
35 to read:

36 4216.19. In the enforcement of this article, and furtherance of
37 its purposes, the authority may authorize staff to use compliance
38 audits, including field audits, and investigations of incidents and
39 near-misses.

1 SEC. 23. Section 4216.20 is added to the Government Code,
2 to read:

3 4216.20. (a) After providing opportunity for hearing pursuant
4 to the administrative adjudication provisions of the Administrative
5 Procedure Act (Chapter 4.5 (commencing with Section 11400) of
6 Part 1 of Division 3 of Title 2), the authority, upon making a
7 finding of violation, may:

8 (1) Assess a civil penalty of no more than ____ dollars (\$ ____).

9 (2) Reach a settlement in lieu of assessing a civil penalty.

10 (3) Require remedial education relevant to the violation.

11 (b) The authority may do both of the following:

12 (1) Use the services of a third party to collect civil penalties.

13 (2) If the authority determines that an individual cannot afford
14 to pay a penalty imposed pursuant to this section, the authority
15 may exempt the individual from payment of the penalty in whole
16 or in part.

17 SEC. 24. Section 4216.21 is added to the Government Code,
18 to read:

19 4216.21. (a) A person aggrieved by a decision of the authority
20 may, within 30 days after receiving the decision, request judicial
21 review of the decision in superior court.

22 (b) In accordance with the judicial review and appeals process
23 under the Administrative Procedure Act (Chapter 3.5 (commencing
24 with Section ~~1140~~, 11340), and Chapter 5 (commencing with
25 Section 11500), of Part 1 of Division 3 of Title 2), the court shall
26 hear and determine all matters connected with the decision of the
27 authority for which judicial review is requested.

28 SEC. 25. Section 4216.22 is added to the Government Code,
29 to read:

30 4216.22. (a) Notwithstanding Section 10231.5, the authority
31 shall report to the Governor and the Legislature on or before
32 January 1, 2017, and each year thereafter, on the activities of the
33 authority and any recommendations of the authority.

34 (b) A report to be submitted pursuant to subdivision (a) shall
35 be submitted in compliance with Section 9795.

36 SEC. 26. Section 320.5 is added to the Public Utilities Code,
37 to read:

38 320.5. (a) The Safe Energy Infrastructure and Excavation Fund
39 is hereby established in the State Treasury. Moneys deposited into
40 the fund shall be used to cover the administrative expenses of the

1 California Underground Facilities Safe Excavation Authority, upon
2 appropriation by the Legislature.

3 (b) ~~Any~~ *Up to five hundred thousand dollars (\$500,000) in*
4 *excess moneys in the fund that fund, if the funds are not necessary*
5 *for the administrative expenses of the California Underground*
6 *Facilities Safe Excavation Authority may, upon appropriation by*
7 *the Legislature, be apportioned by the commission for the following*
8 *purposes:*

9 (1) The California Underground Facilities Safe Excavation
10 Authority, ~~for the purpose of the education and training of persons~~
11 ~~who violate Article 2 (commencing with Section 4216) of Chapter~~
12 ~~3.1 of Division 5 of Title 1 of the Government Code.~~

13 (2) ~~Regional notification centers, as defined in Section 4216 of~~
14 ~~the Government Code, to cover the cost of Authority, to fund public~~
15 *education and outreach programs designed to promote excavation*
16 *safety around underground facilities. facilities and targeted to*
17 *make specific excavator groups.*

18 (3)

19 (2) The commission, to further a workforce development
20 program, which shall be consistent with its equal employment
21 opportunity program, that recruits and trains safety staff to perform
22 the highest quality gas and electric utility inspections, audits,
23 accident investigations, and data tracking and analysis. *Moneys*
24 *used for training purposes may not be used to fulfill existing federal*
25 *or state training requirements but, instead, shall only be used for*
26 *training in addition to those requirements.* The commission may
27 only apportion moneys for this purpose upon commission approval
28 of the workforce development program at a meeting of the
29 commission. *No more than one hundred fifty thousand dollars*
30 *(\$150,000) of the Safe Energy Infrastructure and Excavation Fund*
31 *may be used for this purpose.*

32 (c) *Any moneys not allocated pursuant to subdivisions (a) and*
33 *(b) shall be deposited into the General Fund.*

34 SEC. 27. Section 971 is added to the Public Utilities Code, to
35 read:

36 971. (a) As a part of its damage prevention program carried
37 out pursuant to Section 192.614 of Part 192 of Title 49 of the Code
38 of Federal Regulations, each gas corporation shall collect data to
39 inform its outreach activities. The data shall include all of the
40 following:

(1) Damages that occurred during the performance of landscaping activities. Each gas corporation shall note in its investigation of excavation damage incidents the approximate depth of the gas facility at the time of damage, the type of excavator involved, which may include “homeowner,” “licensed contractor,” or “unlicensed contractor,” and whether the excavator had called the regional notification center before performing the excavation. This paragraph shall become inoperative on January 1, 2020.

(2) Any other information that the commission shall require.

(b) Each gas corporation shall annually report to the commission excavation damage data and analyses in a format of the commission’s choosing.

(c) No later than February 1, 2019, the commission shall report to the Legislature an analysis of excavation damages to commission-regulated pipeline facilities. The report shall include analyses of the types of damages described in subdivision (a).

SEC. 28. Section 1702.5 of the Public Utilities Code is amended to read:

1702.5. (a) The commission shall, in an existing or new proceeding, develop and implement a safety enforcement program applicable to gas corporations and electrical corporations that includes procedures for monitoring, data tracking and analysis, and investigations, as well as issuance of citations by commission staff, under the direction of the executive director. The enforcement program shall be designed to improve gas and electrical system safety through the enforcement of applicable law, or order or rule of the commission related to safety using a variety of enforcement mechanisms, including the issuance of corrective actions, orders, and citations by designated commission staff, and recommendations for action made to the commission by designated commission staff.

(1) When considering the issuance of citations and assessment of penalties, the commission staff shall take into account voluntary reporting of potential violations, voluntary removal or resolution efforts undertaken, the prior history of violations, the gravity of the violation, and the degree of culpability.

(2) The procedures shall include, but are not limited to, providing notice of violation within a reasonable period of time after the discovery of the violation.

(3) The commission shall adopt an administrative limit on the amount of monetary penalty that may be set by commission staff.

1 (b) The commission shall develop and implement an appeals
2 process to govern the issuance and appeal of citations or resolution
3 of corrective action orders issued by the commission staff. The
4 appeals process shall provide the respondent a reasonable period
5 of time, upon receiving a citation, to file a notice of appeal, shall
6 afford an opportunity for a hearing, and shall require the hearing
7 officer to expeditiously provide a draft disposition.

8 (c) The commission shall, within a reasonable time set by the
9 commission, conclude a safety enforcement action with a finding
10 of violation, a corrective action order, a citation, a determination
11 of no violation, approval of the corrective actions undertaken by
12 the gas corporation or electrical corporation, or other action. The
13 commission may institute a formal proceeding regarding the alleged
14 violation, potentially resulting in additional enforcement action,
15 regardless of any enforcement action taken at the commission staff
16 level.

17 (d) The commission shall implement the safety enforcement
18 program for gas safety by July 1, 2014, and implement the safety
19 enforcement program for electrical safety no later than January 1,
20 2015.

21 (e) This section does not apply to an exempt wholesale
22 generator, a qualifying small power producer, or qualifying
23 cogenerator, as defined in Section 796 of Title 16 of the United
24 States Code and the regulations enacted pursuant thereto. Nothing
25 in this section affects the commission's authority pursuant to
26 Section 761.3.

27 (f) Moneys collected as a result of the issuance of citations
28 pursuant to this section shall be deposited in the Safe Energy
29 Infrastructure and Excavation Fund.

30 SEC. 29. No reimbursement is required by this act pursuant to
31 Section 6 of Article XIII B of the California Constitution because
32 the only costs that may be incurred by a local agency or school
33 district will be incurred because this act creates a new crime or
34 infraction, eliminates a crime or infraction, or changes the penalty
35 for a crime or infraction, within the meaning of Section 17556 of
36 the Government Code, or changes the definition of a crime within
37 the meaning of Section 6 of Article XIII B of the California
38 Constitution.

O